of subsection (3) of section 14 of the Road Traffic Ordinance.

Now this was the only mention of a previous conviction on the record. How it came to the knowledge of the trial magistrate is not at all clear.

When there is a revelant previous conviction the prosecution should produce some proof of it, and should be recorded as so doing, and it should then be put to the accused and if he admits it the court should proceed to sentence.

If he does not admit the previous conviction then the sworn evidence of some person present at the time of the conviction and who can identify the accused should be given. Under subsection (1) of section 7 of the Fingerprints Ordinance (No. 18 of 1956) a certificate in the form prescribed purporting to be signed by one on behalf of the director shall, until the contrary is proved, be evidence of all previous convictions and sentences and other facts stated therein. If such a certificate is produced then the onus of proving it to be incorrect is upon the accused.

Further in cases similar to this the accused should be given the opportunity to bring to the notice of the court any special reasons or special circumstances he may have as to why disqualification should not be imposed. This should be recorded and the evidence of the accused should be on oath.

Here there was no proof of the previous conviction and no opportunity was given to the appellant to put forward any special circumstances. This occasioned a failure of justice.

In the event I varied the sentence to read Fine of $50: subsection (2) of section 14: conviction to be endorsed on licence. The trial magistrate had overlooked the mandatory provisions of subsection (2).

The appellant was directed to produce his licence within one month from the 13th April to the magistrate so that the endorsement could be entered thereon.

Order accordingly.

GHULAM HUSSAIN v. SHAHAROM & ANOR.

[O.C.J. (Abdul Aziz J.) May 11, 1966]
[K.L. — Civil Suit No. 573 of 1964]

Damages — Personal injuries — Complicated fracture of pelvis with rupture of urethra — Likely to remain impotent and sterile — Pain and suffering and loss of amenities.

The plaintiff, a 29 year old storeman employed by the Telecoms Department was involved in a traffic accident. The injuries that were found on him were, *inter alia*, a complicated fracture of the pelvis with a rupture of the urethra and partial tear of the rectum and the caecum. The nett results of these injuries were that he was likely to remain impotent and sterile and that even if he was eventually discharged from hospital there was little likelihood that he could even lead a comparatively normal life but the doctor was of the opinion that in view of his sedentary occupation and with proper attention and a further operation he would be able to resume his former job. He would be able to walk with a stiff gait. On the question of liability the court found both parties were equally to blame for the accident. On the quantum of damages, special damages had been agreed at $1,691.84 and it had been conceded that there would be no loss of earnings. On the question of general damages,

Held: on a full measure of damages $45,000 would be a reasonable award for loss of amenities, pain and suffering. Consequently there was judgment for the plaintiff against the defendant for $23,345.92, interest at 6% and costs.

[Editorial Note: See *Ban Pet Hock* v. *Ong Ah Ho*, p. 253, where Choor Singh J. held that on principle interest should not be allowed when damages are awarded in running-down cases, and gave his reasons for so doing.]

Cases referred to:—

(1) *Lim Cheng Siew* v. *State Advocate-General* [1965] M.L.J. xxvii.

(2) *Liow San* v. *Chai Choo Kim* [1962] M.L.J. 429.

(3) *Chua Kim Liang* v. *Teo Kim Ngo* [1963] M.L.J. 262.

(4) *Digest of damages in leg cases in* [1964] M.L.J. xlv.

CIVIL SUIT.

Denis Murphy for the plaintiff.

L. T. Chan (Miss) for the defendants.

Cur. Adv. Vult.

Abdul Aziz J.: This is a claim for special and general damages arising out of a traffic accident which occurred on the 1st October 1963 at Sungei Besi Road, Kuala Lumpur.

The plaintiff's version of the accident was that on the day in question he was riding a motor cycle towards Kuala Lumpur town and travelling at 22 miles per hour when he saw some female cyclists ahead of him riding two abreast also travelling in the same direction. As he neared them he sounded his horn and they went into single file. He then swerved out to overtake the cyclists and as he did so he was knocked down from behind by a military lorry which was travelling in the same direction. On cross-examination he said that he first saw the two cyclists thirty to forty yards ahead of him and at that time he was three feet from the grass verge. Also, when he decided to overtake the cyclists he did not anticipate any vehicles coming from behind and he did not take precautions to ensure that no vehicles were in fact coming from behind.

The first defendant's version was that on the day in question as he was travelling along Sungei Besi Road he saw two motor cycles 10-15 yards ahead of him and two cyclists ahead of the motor cyclists. The two cyclists were riding two abreast about 1-2 feet from the grass verge and behind them were two motor cyclists riding in single file. He then gave a signal by sounding

his horn with the intention of overtaking the motor cyclists. Suddenly one of the motor cyclists who, he said, was the plaintiff, swerved out into the road also to overtake the cyclists as a result of which there was a collision between his lorry and the motor cyclist. His speed then was about 20-30 miles per hour.

It is clear from the photographs and the relative dimensions of the two vehicles that the left bumper of the motor lorry came into contact with the seat of the motor cycle and from the sketch plan it is apparent that the accident occurred as a result of the motor cycle coming into the path of the motor lorry. The point of impact judging from the position of the scratch mark was about 5' 9" from the grass verge and if the motor cycle was travelling about 3 feet from the grass verge before the impact it would indicate that the motor cyclist swerved sharply to the right when he was overtaking the cyclists.

As a result of the accident the plaintiff was admitted to hospital on the same day, i.e. 1st October 1963 and was still in hospital on the date of the trial. The injuries that were found on him were a complicated fracture of the pelvis with rupture of the urethra and partial tears of the rectum and the caecum and a lacerated wound 5" long on the right thigh. He had to undergo one operation on admission for the injuries to the bladder and bowel. He also developed a pathological dislocation of the right hip which was still under treatment. Surgery showed that he had a complete rupture of the prostatic urethra and extensive fracture of the pelvis. According to the expert he will be unable to pass urine or motion normally and that another operation would have to be performed on him to make his life more comfortable. The nett results of the injuries are that he is likely to remain impotent and sterile and that even if he is eventually discharged from hospital there is little likelihood that he can even lead a comparatively normal life but the doctor was of the opinion that in view of his sedentary occupation and with proper attention and a second operation he should be able to resume his former job. He would be able to walk with a stiff gait. At the time of the accident the plaintiff was approximately 29 years old and was single. He was employed as a storeman in the telecoms department drawing a salary of $125.28.

On the question of liability I find that both parties were equally to blame for the accident. Among other things the plaintiff swerved out into the path of the motor lorry without ensuring that it was safe to do so and the defendant drove his vehicle too fast under the circumstances. As regards the quantum of damages I have taken into account that the plaintiff has suffered and will continue to suffer severe pain and suffering and that thereafter his prospects will be dreary. He will be unlikely to lead even a comparatively normal life although he would be able to resume his former occupation. He will stand to lose the simple pleasures of life which a normal and healthy person of his age could enjoy and because he will be impotent and sterile he will also lose the opportunity to marry.

Since the special damages has been agreed at $1,691.84 and it has been conceded that there will be no loss of earnings the only question is the award for general damages under the heading of pain and suffering and loss of amenities. There are no decided cases which fall on all fours with this particular case but there appears to be several awards made by Singapore and Malayan courts on separate injuries to urethra, impotency and sterility and shortening of the legs. The reported cases I have referred to are *Lim Cheng Siew* v. *State Advocate-General,*[1] *Liow San* v. *Chai Choo Kim,*[2] *Chua Kim Liang* v. *Teo Kim Ngo* [3] and the *Digest of damages in leg cases.*[4]

On a full measure of damages, therefore, I consider $45,000 to be a reasonable award under the heading of loss of amenities, pain and suffering.

Consequently there will be judgment for the plaintiff against the defendants for $23,345.92, interest at 6% and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar.*

QUAH OOI KEAT & ANOR. v. YEW PHAIK HOON

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) and Ismail Khan J.) May 15, 1966]

[J.B. — Federal Court Civil Appeal No. 35 of 1966]

Trusts and Trustees — Resulting trust — Transfer of land by nominee to son and stepson of claimant — Whether resulting trust or scheme of family arrangement by claimant's husband.

Advancement — Transfer of land from mother to son and stepson of polygamous Chinese family — Applicability of English authorities.

The plaintiff, the second wife of *Q.H.C.*, claimed a declaration that the first defendent, her stepson, and the second defendent, her own son, who were the registered proprietors of three pieces of land in Johore forming an oil palm estate, were not the beneficial owners but held the oil palm lands as trustees for her.

Q.H.C. became bankrupt in 1932. After his bankruptcy *Q.H.C.*'s business was carried on by the plaintiff's brother *Y.H.E.*, who was also administrator of the estate of the plaintiff's deceased father. On December 27, 1937, *Q.H.C.* transferred the oil palm lands to the Official Assignee and on January 13, 1938, the Official Assignee transferred the land to *Y.H.E.* On October 1 ,1938, *Q.H.C.*'s discharge in bankruptcy became effective. On June 29, 1940, an agreement was signed between the